

AFFIDAVIT FOR SEARCH WARRANT

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| United States District Court | | DISTRICT WESTERN DISTRICT OF WASHINGTON | |
| United States of America vs. THE PIONEER CONSTRUCTION MATERIALS COMPANY, A DIVISION OF RIEDEL INTERNATIONAL, INC. | | DOCKET NO. | MAGISTRATE'S CASE NO. |
| | | NAME AND ADDRESS OF JUDGE ¹ OR U.S. MAGISTRATE PHILIP K. SWEIGERT United States Magistrate 304 U.S. Courthouse Seattle, WA 98104 | |
| The undersigned being duly sworn deposes and says: That there is reason to believe that | | | |
| <input type="checkbox"/> on the person of <input type="checkbox"/> on the premises known as | | DISTRICT WESTERN DISTRICT OF WASHINGTON | |
| The Lake Union ready-mix concrete plant of the Pioneer Construction Materials Company, a division of Riedel International, Inc., a multi-acre industrial facility located at 901 Fairview Avenue North, Seattle, Washington. The Pioneer Construction Materials facility is clearly identified as such by a large sign. This sign is located by the main entrance on the west side of the property. (See Attachment A) | | | |
| The following property (or person) is concealed: | | | |
| Certain property, to which the affiant and other employees of the United States Environmental Protection Agency seek access for the purpose of (1) inspecting and photographing facilities, devices and materials, (2) sampling raw materials and process and waste waters; (3) seizure of documentary evidence, these items of property further described in the attached Property List (Attachment B), | | | |
| Affiant alleges the following grounds for search and seizure ² : | | | |
| Violations of the Federal Water Pollution Control Act, Title 33, United States Code, Section 1251, <u>et seq.</u> ; the Rivers and Harbors Act, Title 33, United States Code, Sections 403, 407 and 411; and the Resource Conservation and Recovery Act 42 U.S.C. Section 6928, <u>et seq.</u> | | | |
| <input type="checkbox"/> See attached affidavit which is incorporated as part of this affidavit for search warrant | | | |
| Affiant states the following facts establishing the foregoing grounds for issuance of a Search Warrant | | | |
| See attached affidavit of Gerd Hattwig (Attachment C). | | | |
| SIGNATURE OF AFFIANT GERD HATTWIG | | OFFICIAL TITLE, IF ANY Special Agent & Special Deputy, U.S. Marshal | |
| Sworn to before me, and subscribed in my presence: | | JUDGE ¹ OR US MAGISTRATE | |
| DATE October 9, 1986 | | PHILIP K. SWEIGERT | |

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¹United States Judge or Judge of a State Court of Record.²If a search is to be authorized "at any time in the day or night" pursuant to Federal Rules of Criminal Procedure 41(c), show reasonable cause therefor.

ATTACHMENT A

This property is bordered on the south side by a two-story office building and warehouse, which also forms a part of the western border along with the western entrance gate and a fence which ends to the north at the water's edge of Lake Union. Lake Union then forms the rest of the western, northern, and eastern border of this property, as part of the plant (a loading pier) is built into Lake Union. A fence to the water's edge forms the rest of the eastern boundary and a truck gate and a section of chain link fence on the south side of the plant complete the boundary. Both entrances to the plant and the plant are clearly marked with signs identifying it as Pioneer Construction Materials Company.

The facility consists of a main cement plant, an attached two story office building and several other detached buildings, including a small, two story office-type building at the approximate center of the property. Affixed to the main cement plant are a number of large tower-like structures and a water tower. Near the northern boundary are waste storage lagoons or settling tanks built out into Lake Union and attached to the bulkhead. There are also conveyor belts and piping connecting various structures.

ATTACHMENT B

Property List

1. SAMPLING AND INSPECTION: all raw material and waste and waste water storage, treatment, and disposal areas, including those containing cement and concrete raw materials, concrete production final products, concrete production byproducts and wastes, concrete production equipment cleaning solutions (unused and waste); all concrete production and related waste disposal equipment and devices, including tanks, vats, lagoons, manholes, pipes, drains, trenches, conduits, valves and waste material land application areas and equipment, and affiliated structures (buildings) housing the same; all general equipment used in concrete production, including returning (mostly) empty Pioneer and Glacier Sand and Gravel trucks present on the facility during the time of execution of this warrant; soil, water, and waste liquids, and other natural or man-made materials in the vicinity of the areas and devices referred to above.

2. PHOTOGRAPHY: all structures, buildings, offices, piping, equipment, and other areas of the Pioneer Lake Union plant.

3. DOCUMENTS AND FILES: all sorts, including books, records, computer disks, other storage media, or printouts including but not limited to the following;

a. Documents indicating the name, addresses, and telephone numbers of all company employees and all documents

which contain job descriptions or other material defining the nature and scope of each employee's responsibilities, and records which show time and attendance of said employees, including time cards, or other such records reflecting employment history, such records to include those of former employees no longer currently employed by the company;

b. All records for cleaning operations involved in concrete production and sale;

c. All documents indicating the chemical constituents and physical properties of concrete production raw materials, cleaners, and related waste, including but not limited to animal and plant studies, laboratory analyses, formulas, recipe books, production labels, chemical indexes and manuals, manufacturers' descriptive literature, safety literature and employee precautions;

d. Any documents, correspondence, notes, or memoranda concerning communications by or between (1) officials and employees of Riedel International, Inc., and its division, Pioneer Construction Materials (and Glacier Sand and Gravel) or Lone Star Industries, Inc., or (2) these company officials and employees and federal, state and local environmental, health, and industrial waste water treatment agencies which in any way relate to concrete production wastes, concrete production cleaning materials and the disposal of these wastes;

e. Documents and files demonstrating knowledge on the part of corporate officers and employees of the nature of the

materials handled at Pioneer Construction Materials Co. and/or of laws regulating their disposal and use;

f. Documents, correspondence, notes, and memoranda concerning citizen complaints to Pioneer Construction Materials Co., Lone Star Industries, Inc., about waste discharge;

g. Any documents relating to contracts with any transporter, treater, or disposer for the handling of concrete production waste materials;

h. Maps, sketches or other schematics of plumbing, trenches, production lines, discharge systems and pipes or cooling water systems, and records of modifications, construction or renovation of plumbing or piping including contracts, bills, payments and letters to or from contractors;

i. Records, flow meter charts, log books, and discharge monitoring notes, laboratory analyses and notebooks, and other documents concerning quantities, rates, and constituents of waste water discharge (both directly to Lake Union and to the sanitary sewer);

j. Records, logs, tallies or other documents reflecting accumulation rates for wastes;

k. Records, logs, tally sheets or other documents concerning concrete production quantities;

l. Facility or driver concrete truck trip log sheets and other records of use and cleaning of cement and concrete trucks owned and/or operated by Pioneer Construction Materials

Co. and Glacier Sand and Gravel Co., operated out of the Pioneer Lake Union facility;

m. Night watchman logs, records, or reports containing reference to waste water valve operation, waste discharge, equipment monitoring, and night crew employee attendance;

n. Documents reflecting the purchases, uses, and disposal of any acids at Pioneer Construction Materials Co.;

o. Documents explaining operation of any computer system containing any of the above information.

ATTACHMENT C

A F F I D A V I T

GERD R. HATTWIG, being first duly sworn on oath, states:

1. I am a Special Agent with the United States Environmental Protection Agency (hereafter "EPA") Office of Criminal Investigations located in Seattle, Washington. In my current position, I am also a Special Deputy United States Marshal and am authorized to obtain and execute search warrants.

2. I am responsible for, among other things, conducting investigations of criminal violations of several environmental statutes, including the Federal Water Pollution Control Act (33 U.S.C. §§ 1251, et seq.), commonly referred to as the Clean Water Act (CWA), the Rivers and Harbors Act (33 U.S.C. §§ 403, 407, and 411), and the Resource Conservation and Recovery Act (hereafter, "RCRA"), 42 U.S.C. §§ 6901, et seq.

The CWA bans the discharge of any pollutant into a navigable water via a "point source" except in compliance with a previously obtained permit under the National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. §§ 1311(a), 1319(c)(1), and 1342. "Pollutant" is broadly defined to include, inter alia, "sewage, garbage, chemical wastes, biological materials and industrial . . . and agricultural waste discharged into water." 33 U.S.C. § 1362(6). A "point source" is also broadly defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, . . . from which pollutants are or may be

1 discharged." 33 U.S.C. § 1362(14). NPDES permits are available
2 from the State of Washington Department of Ecology ("Ecology") and
3 from EPA, upon application and acceptance of conditions usually
4 required in such permits (such as effluent limits). Section 402
5 of the CWA, 33 U.S.C. § 1342, establishes the NPDES permit system
6 as a basic mechanism for enforcing the effluent and water quality
7 standards applicable to direct discharges into navigable waters.
8 The CWA provides for criminal penalties for willfully or
9 negligently: (a) discharging pollutants into navigable waters
10 without an NPDES permit for the particular discharge, and
11 (b) violating conditions contained in any NPDES permit. 33 U.S.C.
12 § 1319(c)(1).

13 The Rivers and Harbors Act makes criminal the discharge
14 of "refuse" into navigable waters without a permit. 33 U.S.C.
15 §§ 403, 407, and 411. Courts interpreting the term "refuse" have
16 broadly defined it to include virtually all wastes.

17 RCRA was enacted in 1976 as a Congressional response to the
18 growing number of hazardous waste sites resulting from unregulated
19 waste disposal practices. 5 U.S. Code Cong. & Admin. News 6441
20 (1976). The objectives of this statute include, inter alia,
21 protection of human health and the environment through stringent
22 regulation of the treatment, storage, transportation, and disposal
23 of hazardous waste. 42 U.S.C. § 6902. The Act accomplishes its
24 objectives by creating a "cradle-to-grave" regulatory scheme to
25 govern and track hazardous wastes from the point of generation
26 until their final disposal.

1 First, the statute requires the EPA to identify and list
2 solid wastes which meet the statutory definition of a hazardous
3 waste.^{1/} These identified and listed hazardous wastes are then
4 further subject to regulations established by the EPA regarding
5 the handling of such wastes. 42 U.S.C. § 6921. The majority of
6 these regulations, including those listing and identifying
7 hazardous wastes, were promulgated on May 19, 1980, and became
8 effective on November 19, 1980. See generally 40 C.F.R. Part 261.

9 Once a waste is listed as hazardous, it is subject to
10 regulation unless the generating facility petitions for and
11 obtains an exclusion from regulation by demonstrating that the

12 1/ The statute defines "hazardous waste" as:

13 [A] solid waste, or combination of solid
14 wastes, which because of its quantity,
15 concentration, or physical, chemical or
infectious characteristics may --

16 (A) cause, or significantly contribute
17 to an increase in mortality or an
increase in serious irreversible, or
incapacitating reversible illness; or

18 (B) pose a substantial present or
19 potential hazard to human health or the
20 environment when improperly treated,
stored, transported, or disposed of, or
otherwise managed.

21 The term "solid waste" is defined in § 6903(27) as:

22 [A]ny garbage, refuse, sludge from a waste
23 treatment plant . . . and other discarded
24 material including solid, liquid, semisolid or
25 contained gaseous material resulting from
26 industrial, commercial, mining and
agricultural activities

1 waste does not meet any of the hazardous criteria under which it
2 was listed. See 40 C.F.R. § 261.3(c) and 260.22. Individual
3 waste generators must identify their own wastes as hazardous, see
4 42 U.S.C. § 6922 and 40 C.F.R. § 262.11, and must then arrange
5 for the proper transportation, treatment, storage, and disposal
6 of the waste in accordance with the statute and applicable
7 regulations. 42 U.S.C. § 6922 and 40 C.F.R. Part 262.
8 Specifically, arrangement must be made to treat, store, or
9 dispose of the wastes at a facility permitted, pursuant to RCRA,
10 to handle such wastes.

11 The treatment, storage, or disposal of hazardous wastes may
12 take place only at a facility properly issued a RCRA permit, 42
13 U.S.C. §§ 6925 and 6926, whether the facility is owned and
14 operated by the waste generator or an unrelated party. These
15 permits impose regulatory conditions specifically tailored to the
16 type of activity at a particular facility and the facility may
17 only handle those wastes and perform those activities covered by
18 its permit. See 40 C.F.R. Part 264.

19 Recognizing that the process of issuing RCRA permits would
20 take a significant period of time, Congress created a mechanism
21 whereby existing hazardous waste treatment, storage, and disposal
22 facilities could remain in operation from the effective date of
23 the regulations until the issuance of a permit. Thus, a facility
24 was considered to have "interim status", and treated as having a
25 permit, if it met the following conditions: (1) it was in
26 existence on November 19, 1980; (2) the appropriate notice of

1 hazardous waste activity was given to EPA; and (3) an application
2 for a permit was made by November 19, 1980,^{2/} with modification
3 later as appropriate based upon changed circumstances.^{3/}
4 42 U.S.C. § 6925(e). However, the permit status is strictly
5 limited to only those activities described in the permit
6 application, or subsequent modified application. 40 C.F.R.
7 § 270.71. Thus, where a permit application maintains that the
8 facility stores hazardous waste only, disposal is not permitted.
9 Nor is the storage or disposal of hazardous waste in a manner
10 other than that specified in the application allowed. 40 C.F.R.
11 § 270.71. A facility may only treat, store, or dispose of those
12 wastes specifically listed and described in the permit
13 application. Interim status facilities are also subject to
14 regulations similar to those which will later be applied to the
15 facility through a final RCRA permit. See 40 C.F.R. Part 265.

16 Section 6926 of RCRA provides a mechanism whereby a State
17 may seek authorization from the Administrator of EPA to
18 administer a hazardous waste program within the State. The

19 ^{2/} November 19, 1980, is the effective date for EPA's
20 hazardous waste regulatory program.

21 ^{3/} A land disposal facility qualifying for interim status
22 prior to November 9, 1984, would maintain this status after
23 November 9, 1985, only if the owner or operator of the facility
24 applied for final permit determination prior to that date and
25 certified that the facility was in compliance with all
26 applicable groundwater monitoring and financial responsibility
requirements. 42 U.S.C. § 6925(e). If these requirements were
not met, the facility would be considered to be operating
without a permit.

1 Administrator of EPA will authorize such a program if the State
2 demonstrates, among other things, that its proposed program is
3 equivalent to the federal program. Once a State receives
4 authorization pursuant to section 6926, then the State
5 regulations apply, in lieu of the Federal regulations, for
6 purposes of determining whether the material is in fact a
7 hazardous waste and therefore is subject to regulation. The
8 State of Washington received authorization from EPA to carry out
9 a hazardous waste program on August 2, 1983.

10 The criminal enforcement provisions of RCRA provide, inter
11 alia, at 42 U.S.C. § 6928(d)(1) (as amended by the Hazardous and
12 Solid Waste Amendments of 1984 - P.L. 98-616, 98 Stat. 3661) that:

13 any person who --

14 (1) knowingly transports or causes to be
15 transported any hazardous waste
16 identified or listed under this
17 subchapter to a facility which does not
18 have a permit under section 6925 of this
19 title (or section 6926) of this title in
20 case of a State program)

21 (2) knowingly treats, stores, or
22 disposes of any hazardous waste . . .
23 without having obtained a permit . . .

24 shall be guilty of an offense.

25 3. Since September 1986, I have been conducting an
26 investigation of unpermitted discharges of wastes into the
environment, both land and water, at and near the south end of
Lake Union in Seattle, Washington, from a ready mix concrete
plant operated by Pioneer Construction Materials Company,
identified in the telephone directory and Dun and Bradstreet

reports as a division of Riedel International, Inc. This plant is located at 901 Fairview Avenue North, Seattle, Washington. From my personal observations, I know this facility consists of a number of gray tall tower-like structures commonly associated with cement plants, a water tank tower, a truck wash area (consisting of concrete and earth) and wash water settling ponds, and a two-story office building facing Fairview Avenue North. Part of this building is also used as a warehouse and retail sales facility. A second smaller two-story building is located in the middle of the yard next to the truck wash area. The plant is bordered on the south side by the large two-story office building, which also forms part of the western border along with the western entrance gate and a fence which ends to the north at the water's edge of Lake Union. Lake Union forms the rest of the western, northern, and eastern border of this plant. A fence to the edge of Lake Union forms the rest of the eastern boundary and a truck gate and a section of chain link fence on the south side of the plant completes the boundary. The entrances to the plant and the plant itself are clearly marked with signs identifying it as Pioneer Construction Materials Company.

4. I have examined the files of the EPA in Seattle regarding the Pioneer Construction Materials Company, Riedel International, Inc., and Glacier Sand and Gravel Company, and have consulted with the Ecology office for the Seattle area. According to the files of both agencies, there are no records of any NPDES permit or permit application for this facility on

1 file. There are also no RCRA permits on file for the disposal of
2 hazardous wastes at the Pioneer facility on Lake Union.

3 5. On October 6, 1986, I reviewed files provided by the
4 METRO agency regarding Pioneer Construction Materials Company and
5 learned that Waste Discharge Permit Number 7181 was issued to
6 Lone Star Industries, Inc., on June 2, 1981, for their plant
7 located at 901 Fairview Avenue North, Seattle, Washington, and
8 transferred in April of 1984 to Pioneer Construction Materials
9 Company. The expiration date for this permit was June 2, 1986,
10 and the permit allowed this plant to discharge up to 4000 gallons
11 of industrial waste water and 1500 gallons of sanitary waste
12 water per day into the municipal sanitary sewer system.

13 On April 4, 1986, Mr. Bruce R. Burrow, an inspector
14 employed by METRO, conducted an inspection of the Pioneer plant
15 on Fairview Avenue North as part of the renewal process for Waste
16 Permit Number 7181. During this inspection, Burrow was
17 accompanied by the plant manager, John White, who told Burrow
18 that the Fairview plant is not currently discharging to the Metro
19 system because the pipes are inoperative, having been broken when
20 a barge ran into the pier in mid-March, 1986. According to
21 Mr. White, the piping would be fixed as soon as possible. White
22 also said that in the meantime, if ponds became too full, they
23 will be drawn down into trucks and taken to the East Marginal Way
24 plant for use as make-up water. Additionally, Mr. Burrow noticed
25 during his inspection that liquid waste water was escaping from
26 an opening at the northwest end of the second final settling tank

1 into Lake Union. Mr. Burrow said he pointed out this discharge to
2 Mr. White and requested that White close the breach in the wall of
3 the tank as soon as possible. Mr. Burrow stated he told Mr. White
4 that the Washington Department of Ecology would issue a citation
5 for this type of discharge because it is illegal. Mr. White
6 indicated to Mr. Burrow that he would stop the discharge and would
7 take care of this problem. The METRO file also contains a letter
8 dated May 27, 1986, from Pioneer Construction Company signed by
9 Ronald E. Summers, Operations Manager. This letter is addressed
10 to Mr. Burrow and states that Pioneer plans to close the Fairview
11 plant in mid-November 1986; that there have been no discharges to
12 the Metro system for two years and that Pioneer does not feel it
13 needs to discharge into the Metro system in the next six months.
14 The Summers letter also acknowledges receipt of a draft copy of
15 the new METRO permit but indicates that Pioneer does not want to
16 renew the permit at the time of the letter.

17 6. Since September 11, 1986, I have conducted surveillance
18 of the Pioneer plant on Lake Union. On numerous occasions, cement
19 waste liquid discharges from a number of point sources have been
20 observed by me and other law enforcement officers. I was able to
21 photograph, videotape and sample some of these discharges. For
22 example, on September 15, 1986, I sampled a liquid discharge
23 flowing from the northeast corner of the cement waste water
24 settling tank. This discharge into Lake Union was gray and
25 flowing in a stream about one foot wide and a half a foot high
26 from a v-shaped cut in the cement wall of the settling tank. I

1 field tested this liquid with a portable pH meter. The pH was
2 12.3. The sample was then transmitted to the EPA Laboratory at
3 Manchester, Washington for further tests. This high pH is
4 commonly associated with alkaline concrete plant discharges, which
5 is the reason that effluent guidelines have been promulgated by
6 EPA for concrete plants. A liquid with a pH of greater than 12.5
7 is a hazardous waste as defined in 40 C.F.R. § 261.22
8 (characteristic of corrosivity). Wastes with high alkalinities
9 can cause skin burns and kill various forms of aquatic life.
10 Plants complying with the CWA commonly reuse wash waters to make
11 new batches of concrete or use acids to neutralize the alkalinity
12 of waste waters to a pH of no higher than 9 before being permitted
13 to discharge to surface waters.

14 Other special agents and I have also observed a brownish
15 liquid discharge into the lake from behind a square metal plate
16 located about halfway up the eastern wall of the cement waste
17 water tank. This plate is about one foot square and is attached
18 to the cement wall of the cement waste water tank by a single bolt
19 through its center. From my investigation of the Pioneer
20 Construction Materials plant located at 5975 East Marginal Way
21 South, Seattle, Washington, and the execution of Federal Search
22 Warrant #86-231M-01 on September 3, 1986, at that plant I know
23 that a similar metal plate was used at the East Marginal Way plant
24 as an overflow drain on the cement waste water tank. The East
25 Marginal Way metal plate was fitted loosely, about an inch
26

1 or more out from the cement wall, over a hole which had been
2 jackhammered through the wall. The hole allowed the waste liquid
3 to flow out of the settling tank whenever the liquid rose to the
4 level of the hole and plate.

5 7. Since records of EPA and Ecology show no permit
6 authorization for disposal of these highly corrosive wastes in
7 the manner done, i.e., by discharging them into the soil and
8 water near or on the shoreline of Lake Union I have reason to
9 believe that illegal disposal of pollutants and perhaps hazardous
10 wastes have occurred in violation of the CWA, the River and
11 Harbors Act, and perhaps RCRA, when portions of these materials
12 were allowed to enter the waters of Lake Union.

13 8. Based on my experience with the IRS and EPA, and my
14 familiarity with industrial facilities gained through discussions
15 with other employees of the EPA and Ecology, it is likely that
16 Pioneer (including Glacier), and its employees maintain business
17 records for the purpose of billing and preparing business tax
18 returns. Usually, such records are kept in payment records,
19 general ledgers, invoices and billing statements, and related
20 computer files. These records will show the frequency of use of
21 the trucks transporting concrete. In addition, the company's
22 records should indicate what raw materials were purchased for use.

23 In my experience, facilities that use and handle potentially
24 hazardous chemical materials of the sort used by Pioneer
25 generally have documents containing safety information describing
26 the nature and hazards of the chemicals they use, and handling

1 precautions for employee safety. Washington State law now
2 requires such information to be maintained and provided to
3 employees.

4 Lastly, the company must maintain employee records for tax
5 and other purposes.

6 GERD R. HATTWIG
7 Special Agent
8 United States Environmental
9 Protection Agency

10 SWORN TO before me this _____ day of _____, 1986.

11 UNITED STATES MAGISTRATE